Approval of development over the Goat River trail and near the Goat River

Complaint Investigation 000250

Forest Practices Board

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The Investigation

This investigation examines a complaint by the Fraser Headwaters Alliance (the complainant) about whether operational plans prepared by Zeidler Forest Industries Limited (the licensee) met the requirements of the *Forest Practices Code of British Columbia Act* and its regulations (the Code). McBride Forest Industries Ltd. now holds the licence. The complaint involves two issues:

1. Was approval of a road next to the Goat River, a fish-bearing stream, appropriate and consistent with the Forest Practices Code?

2. Was approval of a cutblock over and near a trail used for recreation appropriate and consistent with the Forest Practices Code?

Background

The complaint arose within the upper portion of the Goat River watershed, approximately 40 kilometres northwest of McBride. That portion of the watershed is undeveloped and has significant value for timber, fisheries and recreation. Cabinet, by endorsing the *Robson Valley Land and Resource Management Plan* (LRMP) in 1999, sought to balance those competing interests by allowing harvesting there but requiring that the district manager and designated environment official jointly approve forest development plans. The LRMP has not been declared a higher-level plan under the Code, but has been used to guide planning and development in the district.

The upper portion of the Goat River watershed includes a section of the historic Goat River trail. The trail was cleared in 1886 to access the Cariboo goldfields. The BC Forest Service maintained the trail from the 1930s until the mid-1970s, when it discontinued maintenance. In 1998 and 1999, the complainant marked and cleared 32 kilometres of the trail. The complainant located the original trail location to the best of its abilities using historic maps, local knowledge and old blazes.

The licensee is preparing to harvest in the upper Goat River watershed. Parts of the watershed have unstable terrain. The licensee and Ministry of Forests (MOF) have consequently considered four different routes for the first five kilometres of road into the watershed. The licensee included two of the alternate routes in its 1998-2003 forest development plan (FDP), and again in its 1999-2004 FDP. Those routes are the "upper route" and the "lower route". The plans show that the lower route is located near the Goat River and near or over the Goat River trail. The plans also propose cutblocks over the trail.

The district manager approved both the upper and lower routes in the 1998 forest development plan and again in the 1999 FDP. His approvals state that he will decide later which road will actually be built. He also approved, in the 1998 FDP, one cutblock over the trail.

Initial layout and design work for both routes has been completed but not assessed or approved by the district manager. The layout for the lower route is inside the riparian reserve zone of the Goat River for approximately 300 metres. That route design would also encroach on the river itself, filling in some of the riverbed over a length of 150 metres. The upper route avoids both the river and the trail, rejoining the lower route at the five-kilometre mark.

The complainant is concerned that the lower route, if constructed, will reduce the wilderness experience and historical significance of the Goat River trail, and damage the fisheries resource of the Goat River. At the time of writing, the district manager had not yet made a final decision on road location. The district manager was considering recently completed assessments on the potential environmental impact of the lower route.

Relevant Legislation

Forest Practices Code of British Columbia Act

Section 10, Forest development plans: content

Section 58, Authority required to construct or modify a road on Crown land

Section 60, Road layout and design

Section 41, Approval of plans by district manager or designated environment official

Forest Road Regulation

Section 4, Selecting road location

Discussion

Route location near the Goat River

Did the lower route comply with the requirement to locate roads outside of riparian management areas?

Section 58 of the *Forest Practices Code of British Columbia Act* (the Act) requires a licensee to identify the location of a proposed road on an approved FDP and to obtain a road permit under the *Forest Act* prior to constructing a road on Crown land. Section 60 requires the licensee to obtain the district manager's approval of a road layout and design prior to constructing the road to which a road permit applies. The road layout and design must be consistent with the approved FDP, and must be prepared in accordance with the regulations.

Section 4(2) of the *Forest Road Regulation* (FRR) requires that roads be located outside of riparian management areas (except for crossings) unless the district manager believes that no other practicable option exists, or that a higher risk of sediment delivery would result by locating the road outside the riparian management area. The Board does not take the view that section 4(2) is specifically a requirement for a FDP. This is because the location of a road may not be described precisely enough in an FDP to determine whether this requirement will be satisfied (the Code requirement is to describe the *approximate* location of roads in an FDP). The Board therefore takes the view that it is usually appropriate for a district manager to address section 4(2) during the review and approval of a road layout and design and road permit. However, in some circumstances, it may be obvious—even at the FDP stage—that a proposed road will enter a riparian management area. In such situations, the Board takes the view that the district manager must address section 4(2) in the FDP.

For the circumstances of this complaint, the topography was such that some of the lower route could only go through the riparian management area. That was clear when the FDP was

submitted. The district manager's approval of the lower route therefore included approval of the encroachment into the riparian management area. He could legally do so only if he believed that no other practicable option existed, or that a higher risk of sediment delivery would result by locating the road outside the riparian management area. However, his approval of the upper route indicates that there was a practicable alternative. He did not consider whether the upper route would result in a higher risk of sediment delivery. The district manager's approval of the lower route in the FDP therefore contravened section 4(2) of the FRR.

Did approval of the forest development plan comply with the Code's requirement for adequately managing and conserving forest resources?

Under section 41 of the Act, a district manager cannot approve an operational plan unless satisfied that it will adequately manage and conserve forest resources for the area of the plan. The district manager wrote in his determination approving the 1998 FDP that he was satisfied that both routes would adequately manage and conserve forest resources. The evidence is that the district manager considered a variety of information to assess whether operational plans adequately manage and conserve resources. He therefore complied with the requirement to be "satisfied."

Was approval of the lower route near the Goat River appropriate?

The Code provides a statutory decision maker with discretion to decide whether a forest development plan adequately manages and conserves forest resources and should be approved. The Board considers whether the district manager exercised his discretion appropriately for the circumstances of the complaint. The Board does so by considering whether their decisions to approve the plans were based on the consideration of adequate, relevant information and sound reasoning. In this case, the district manager considered that the draft LRMP designated the area as available for timber harvesting. He also considered reports and advice of professional engineers, Department of Fisheries and Oceans Canada (DFO) and the Ministry of Environment, Lands and Parks (MELP)—which is now the Ministry of Water, Land and Air Protection—regarding the relative merits of the two routes. The district manager believed that his approach of approving the two most promising routes in the 1998-2003 and 1999-2004 FDPs, with a final decision to be made after further assessments were completed, would ensure that the best possible road location was built.

Significant concerns regarding both routes were still unresolved when the district manager approved the routes in the 1998 FDP. An MOF engineer stated that the steep gradients of the upper route could be a serious safety concern. While safety is not an explicit requirement under section 41(1)(b) of the Code, it is a relevant consideration. The MOF engineer also advised that silt soils were a concern for erosion and maintenance. MELP was concerned that the lower route would result in chronic sedimentation problems for the river and destroy much of the highest value wildlife habitat in the drainage. DFO also opposed the lower route, stating it had no confidence that the potential impacts on fisheries could be sufficiently addressed.

Although these concerns were not documented in detail, they created a need for the licensee to demonstrate that the proposal addressed potential risks to these resources. Given the concerns raised by government agency specialists, the Board finds that it was inappropriate for the district manager to be satisfied that either route in the 1998 or 1999 FDPs would adequately manage and conserve forest resources.

Development over the Goat River trail

Did the forest development plans comply with the requirements for managing trails?

Section 10(1)(d) of the Act requires FDPs to be consistent with objectives for managing a trail, where those objectives are part of a higher level plan. In this case, there is no higher level plan. The approach described in the 1998 and 1999 FDPs for managing the Goat River trail therefore complied with section 10(1)(d) of the Act.

Was approval of development over and near the Goat River trail appropriate?

The Board considers whether the decisions to approve development over or near the trail were appropriate by examining whether the decisions to approve plans were consistent with sounds forest practices, achieved the intent of the Code and were based on an adequate assessment of available information. The Board considered the approval of i) the forest development plans, and ii) the silviculture prescription for the cutblock approved over the trail.

i) The forest development plans

The district manager's review of the FDPs considered an archaeological inventory survey, advice from the Heritage Conservation Branch (HCB), and the decision of recreationists to include the Goat River trail as part of a national hiking trail. The district manager's opinion was that HCB left it to him to decide the historical significance of the trail. The archaeological impact study did not provide guidance for managing the trail or lead him to believe that the trail had traditional significance for First Nations. The Federation of Mountain Clubs of BC (FMCBC) committed to include the Goat River trail as a part of a national hiking trail, he learned, but that decision did not involve public consultation. The district manager therefore placed the greatest weight on the LRMP for guidance on how to manage the trail. He concluded that the LRMP allowed development over the trail, and consequently he approved a cutblock located over the trail.

The Board considers the Goat River trail to be both a historic trail and a hiking trail. The archaeological inventory survey and the advice of HCB provide an indication of the historical significance of the trail. The archaeological inventory survey assessed whether the route is a First Nations route, but is inconclusive on that matter. HCB provided advice to the district manager regarding the heritage value of the trail, stating that the trail does not meet the criteria for consideration as a provincially designated heritage site. HCB views the trail as a potentially significant regional heritage trail, and recommended that the district manager consider recognizing its heritage value. Neither the archaeological inventory survey nor the advice of HCB provided any specific management direction for the trail.

The FMCBC's inclusion of the Goat River Trail in the national hiking trail provides an indication of the trail's recreational value. It is a relevant consideration for the district manager when assessing operational plans for approval. However, the FMCBC's decision was made without consulting stakeholder groups, unlike the LRMP process.

The Board's opinion is that LRMP provided the most up-to-date, credible and broad-based guidance on how to manage the historic and recreation values of the trail. It was therefore logical for the district manager to place the greatest weight on the management guidance provided by the LRMP when reviewing the FDP amendment.

The LRMP provides strategies for managing both recreation trails and the historic values of the Goat River trail. One strategy is that "development plans must manage for the historic Goat River Trail." Another strategy allows development to occur over or near trails, providing that quality of access is maintained or the trail relocated. Taken together, the Board interprets that the LRMP allows for development over the Goat River trail under certain conditions. This means that those preparing or approving operational plans in the area should carefully consider the historic value of the trail.

The approved cutblock over the trail may reduce its historical values by eliminating old blazes and other evidence of earlier use. However, the 1998 FDP commits to maintaining the integrity of the trail and keeping it free of logging debris. The 1999 plan commits to minimizing disturbance to the trail and also keeping it free of logging debris. The Board considers those provisions to be consistent with the LRMP's strategies for managing recreation trails and the historic values of the Goat River trail. Given that the LRMP provided the best available guidance, the Board therefore finds that it was appropriate for the district manager to be satisfied that the proposed development over the trail in the 1998 and 1999 FDPs will adequately manage and conserve the trail.

ii) The silviculture prescription

The district manager stated that he was satisfied that the silviculture prescription would adequately manage and conserve forest resources. He therefore approved the silviculture prescription in compliance with section 41(1)(b) of the Act.

The Board notes that the district manager made his approval of the 1998 FDP subject to the conditions that "final block boundary and road location is subject to knowing the exact location of the blocks in relation to the Goat River trail, and that resource objectives are considered prior to approval of silviculture prescriptions." However, the silviculture prescription does not show the location of the trail or include any provisions for managing the trail. The district manager indicated that he did not know the location of the trail when he approved the silviculture prescription. Consequently, the Board's opinion is that the district manager did not have enough information to assess the silviculture prescription's potential effect on the trail. The district manager's approval of the silviculture prescription was inconsistent with the conditions he set out in approving the FDP. The Board finds it was therefore inappropriate for the district manager to be satisfied that the silviculture prescription adequately manages and conserves forest resources.

Conclusions

Route location near the Goat River

1. The district manager contravened the Code by approving a road located in a riparian management area in an FDP without addressing section 4(2) of the *Forest Road Regulation*.

2. Significant concerns regarding the environmental impact of both the upper and lower routes were still unresolved when the district manager approved those routes in the 1998 and 1999

FDPs. It was therefore inappropriate for the district manager to be satisfied that the routes shown in those plans would adequately manage and conserve forest resources.

Development over the Goat River trail

3. There was no higher level plan in effect for the upper Goat River area. The FDPs' provisions for managing the trail therefore complied with the Code's requirements to be consistent with any higher level plan.

4. Because the LRMP provided the best guidance for managing the Goat River trail, it was appropriate for the district manager to place considerable weight on LRMP direction in making his FDP determinations. The 1998 and 1999 FDPs were consistent with the LRMP's strategies for managing trails. It was therefore appropriate for the district manager to be satisfied that the FDPs will adequately manage and conserve the Goat River trail.

5. The district manager's approval of the silviculture prescription without knowing the exact location of the trail indicates that his conditions for approving the 1998 FDP were not met. It was therefore inappropriate for the district manager to be satisfied that the silviculture prescription will adequately manage and conserve forest resources.

Commentary

The Code is structured so that an FDP acts as a coarse filter for identifying general issues regarding proposed road development. A district manager's approval of a road location in an FDP allows a licensee to proceed with more detailed planning and assessments for a road. Once a district manager approves a general road location in an FDP, it is difficult for the district manager to undo that approval. For that reason, the Board believes a district manager and licensee should address important issues raised about a proposed road location prior to a district manager approving it in a forest development plan. In some situations, where there are significant concerns about road impacts, addressing section 41(1)(b) may require completing more detailed assessments prior to approving a road in a forest development plan.

In this case, concerns about the road locations were not addressed prior to the FDP approvals. However, the Board notes that the licensee and MOF have continued to assess the potential impact of the lower route on stream and fisheries values. DFO has indicated that, based on recent assessments, it is no longer opposed to the development of the lower route, providing that compensation measures recommended in the assessments are implemented. The Board is encouraged that DFO's previous objections to the lower route appear to have been addressed. The Board recognizes the extensive work of the licensees, MOF and other agencies to find a suitable road location into the watershed.

Regarding the approval of the silviculture prescription, the Board notes that the licensee has recently determined the exact location of the trail. The licensee has since amended the silviculture prescription to move the cutblock boundary away from the trail. The Board believes that the amended silviculture prescription will help to ensure that the trail is adequately managed and conserved on the ground, despite the concerns with the original silviculture prescription and its approval.

Recommendations

1. The Board recommends that the district manager, upon selecting the final road location, provide a rationale for his decision to the Board and the public. The rationale should revisit the requirements to adequately manage and conserve forest resources, and to locate roads outside of riparian management areas unless the exceptions in the *Forest Road Regulation* apply.

   In accordance with section 186 of the *Forest Practices Code of British Columbia Act*, the Board requests that the Ministry of Forests report on the steps taken to implement this recommendation before approval of the layout and design of the final road location.

2. Approving a road in a riparian management area is an exception to normal practice and must meet conditions set out in the regulations. District managers should therefore document reasons for approving a road in a riparian management area. The rationale need not be so detailed that it creates significant additional workload, but should demonstrate what alternatives were considered and how they were evaluated for compliance with *Forest Road Regulation* section 4(2).